

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 518

Introduced by Assembly Members Yamada and Blumenfield
(Coauthors: Assembly Members Ammiano, Brown, Chesbro, and
Ting)

February 20, 2013

An act to add Article 7 (commencing with Section 14590.10) to Chapter 8.7 of Part 3 of Division 9 of, *and to repeal Section 14590.20 of*, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 518, as amended, Yamada. Community-based adult services.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides, to the extent permitted by federal law, that adult day health care (ADHC) be excluded from coverage under the Medi-Cal program.

This bill would establish the Community-Based Adult Services (CBAS) program, as specified, as a Medi-Cal benefit. The bill would require CBAS providers to meet specified requirements and would require the department to, commencing July 1, 2015, ~~only~~ certify and enroll *as* new CBAS providers *only those providers* that are exempt from taxation as a nonprofit entity.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California supports the right for all to live in the most integrated and community-based setting appropriate, and to be free from unnecessary institutionalization.

(b) California's adult day services have experienced significant instability in recent years due to substantial policy reforms and budget reductions.

(c) For many years, Adult Day Health Care (ADHC) was a state plan optional benefit of the Medi-Cal program, offering seniors and adults with significant disabilities and medical needs an integrated medical and social services model of care that helped these individuals continue to live outside of nursing homes or other institutions.

(d) At its peak in 2004, over 360 adult day health care centers provided care to over 40,000 medically fragile Californians.

(e) The Budget Act of 2011 and the related trailer bill, Chapter 3 of the Statutes of 2011, eliminated ADHC as a Medi-Cal benefit. As codified in Article 6 (commencing with Section 14589) of Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions Code, the Legislature's intent in supporting the elimination of ADHC was that it would be replaced by a smaller, less costly, yet very similar, program. The Legislature sent Assembly Bill 96 of the 2011–12 Regular Session to the Governor to create such a program and the Governor vetoed the bill.

~~(f) Advocacy organizations sued the state, in *Darling v. Douglas*, which was resolved through a legal settlement (Case No. C-09-03798 SBA, United States District Court, Northern District of California), which is the basis for the existing CommunityBased Adult Services (CBAS) program, a smaller, less costly version of ADHC.~~

(f) Seven plaintiffs filed suit against the State Department of Health Care Services seeking relief for violation of, among other laws, due process guaranteed by the United States Constitution, Title II of the federal Americans with Disabilities Act, and Title XIX of the federal Social Security Act. On November 17, 2011, the state and plaintiffs settled the lawsuit (Case No. C-09-03798 SBA, United States District Court, Northern District of California),

1 *which is the basis for the existing Community-Based Adult Services*
2 *(CBAS) program, a smaller, less costly version of ADHC.*

3 (g) Adult day services and CBAS programs remain a source of
4 necessary skilled nursing, therapeutic, personal care, supervision,
5 health monitoring, and caregiver support.

6 (h) The changes forecast in the state's demographics demonstrate
7 a rapidly aging population, at least through the year 2050, thereby
8 increasing the need and demand for integrated, community-based
9 services.

10 (i) A well-defined and well-regulated system of CBAS is
11 essential in order to meet the rapidly changing needs of California's
12 diverse and aging population.

13 (j) Codifying the ~~Darling v. Douglas~~ CBAS settlement agreement
14 principles will ensure that thousands of disabled and frail
15 Californians who relied upon adult day health programs ~~and are~~
16 eligible for CBAS will be able to remain independent and free of
17 institutionalization for as long as possible.

18 SEC. 2. Article 7 (commencing with Section 14590.10) is
19 added to Chapter 8.7 of Part 3 of Division 9 of the Welfare and
20 Institutions Code, to read:

21
22 Article 7. Community-Based Adult Services
23

24 14590.10. It is the intent of the Legislature in enacting this
25 article and related provisions to provide for the development of
26 *Medi-Cal* policies and programs that continue to accomplish all
27 of the following:

28 (a) Ensure that elderly persons and adults with disabilities are
29 not institutionalized inappropriately or prematurely.

30 (b) Provide a viable alternative to institutionalization for those
31 elderly persons and adults with disabilities who are capable of
32 living at home with the aid of appropriate health care or
33 rehabilitative and social services.

34 (c) Promote adult day health options, including
35 Community-Based Adult Services (CBAS), that will be easily
36 accessible to economically disadvantaged elderly persons and
37 adults with disabilities, and that will provide outpatient health,
38 rehabilitative, and social services necessary to permit the
39 participants to maintain personal independence and lead meaningful
40 lives.

(d) Ensure that all laws, regulations, and procedures governing CBAS are enforced equitably regardless of organizational sponsorship and that all program flexibility provisions are administered equitably.

(e) Ensure programmatic standards are codified to offer certainty to providers and regulators.

(f) Compliance with the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Medicaid Demonstration (11-W-00193/9) ~~and provisions of the Darling v. Douglas settlement agreement~~, including, but not limited to, all of the following:

(1) Processes and criteria to determine eligibility for receiving CBAS.

(2) Processes and criteria to reauthorize eligibility for CBAS.

(3) Utilization of the CBAS assessment tool.

(4) Provisions relating to enrollee due process.

(5) Requirements that plans contract with CBAS providers and pay providers at the prevailing Medi-Cal fee-for-service rate.

(6) Appeals and other state and federal protections.

(7) Aid-paid-pending that provides for payment of services during any appeal process, and CBAS provider qualifications.

14590.11. For purposes of this article, all of the following terms shall have the following meanings:

(a) "Community-Based Adult Services" or "CBAS" means an outpatient, facility-based program that delivers nutrition services, professional nursing care, therapeutic activities, facilitated participation in group or individual activities, social services, personal care services and, when specified in the individual plan of care, physical therapy, occupational therapy, speech therapy, behavioral health services, registered dietician services, and transportation.

~~(b) "Darling v. Douglas settlement agreement" means the settlement agreement entered into under Darling v. Douglas, Case No. C-09-03798 SBA, United States District Court, Northern District of California.~~

~~(c)~~

(b) "Department" means the State Department of Health Care Services.

14590.12. Notwithstanding the operational period of CBAS as specified in the Special Terms and Conditions of California's

1 Bridge to Reform Section 1115(a) Medicaid Demonstration
2 (11-W-00192/9), and notwithstanding the duration of the ~~Darling~~
3 ~~v. Douglas CBAS~~ settlement agreement, *Case No. C-09-03798*
4 SBA, CBAS shall be a Medi-Cal benefit.

5 14590.13. An individual shall be eligible for CBAS if he or
6 she *meets medical necessity criteria as set forth by the state and*
7 *meets one of the following criteria, as specified in the Darling v.*
8 *Douglas settlement agreement: criteria:*

9 ~~(a) Meets nursing facility-A (NF-A) level of care criteria or~~
10 ~~above.~~

11 ~~(b) Has been diagnosed by a physician as having an organic,~~
12 ~~acquired or traumatic brain injury, or a chronic mental illness, and~~
13 ~~requires assistance or supervision in activities and instrumental~~
14 ~~activities of daily living.~~

15 ~~(c) Has a moderate to severe cognitive disorder such as dementia~~
16 ~~or Alzheimer's disease.~~

17 ~~(d) Has mild cognitive impairment or moderate Alzheimer's~~
18 ~~disease or other dementia and requires assistance or supervision~~
19 ~~with activities and instrumental activities of daily living.~~

20 ~~(e) Has a developmental disability that meets the definition of~~
21 ~~a substantial disability as described in Section 54001(a) of Title~~
22 ~~17 of the California Code of Regulations.~~

23 *(a) Meets "Nursing Facility Level of Care A" (NF-A) criteria,*
24 *as set forth in the California Code of Regulations, or above NF-A*
25 *level of care.*

26 *(b) Has a moderate to severe cognitive disorder such as*
27 *dementia, including dementia characterized by the descriptors of,*
28 *or equivalent to, stages 5, 6, or 7 of the Alzheimer's type.*

29 *(c) Has a moderate to severe cognitive disorder such as*
30 *dementia, including dementia of the Alzheimer's type and needs*
31 *assistance or supervision with two of the following:*

32 *(1) Bathing.*

33 *(2) Dressing.*

34 *(3) Self-feeding.*

35 *(4) Toileting.*

36 *(5) Ambulation.*

37 *(6) Transferring.*

38 *(7) Medication management.*

39 *(8) Hygiene.*

1 (d) *Has a developmental disability. “Developmental disability”*
2 *means a disability that originates before the individual reaches*
3 *18 years of age, continues or can be expected to continue*
4 *indefinitely, and constitutes a substantial disability, as defined in*
5 *the California Code of Regulations, for that individual.*

6 (e) (1) *Has a chronic mental disorder or acquired, organic, or*
7 *traumatic brain injury. “Chronic mental disorder” means the*
8 *enrollee has one or more of the following diagnoses or its*
9 *successor diagnoses included in the most recent version of the*
10 *Diagnostic and Statistical Manual of Mental Disorders published*
11 *by the American Psychiatric Association:*

12 (A) *Pervasive developmental disorders.*

13 (B) *Attention deficit and disruptive behavior disorders.*

14 (C) *Feeding and eating disorder of infancy, childhood, or*
15 *adolescence.*

16 (D) *Elimination disorders.*

17 (E) *Schizophrenia and other psychiatric disorders.*

18 (F) *Mood disorders.*

19 (G) *Anxiety disorders.*

20 (H) *Somatoform disorders.*

21 (I) *Factitious disorders.*

22 (J) *Dissociative disorders.*

23 (K) *Paraphilias.*

24 (L) *Gender identify disorder.*

25 (M) *Eating disorders.*

26 (N) *Impulse control disorders not elsewhere classified.*

27 (O) *Adjustment disorders.*

28 (P) *Personality disorders.*

29 (Q) *Medication-induced movement disorders.*

30 (2) *In addition to the presence of a chronic mental disorder or*
31 *acquired, organic, or traumatic brain injury, the enrollee needs*
32 *assistance or supervision with one of the following:*

33 (A) *Two of the following:*

34 (i) *Bathing.*

35 (ii) *Dressing.*

36 (iii) *Self-feeding.*

37 (iv) *Toileting.*

38 (v) *Ambulation.*

39 (vi) *Transferring.*

40 (vii) *Medication management.*

1 (viii) *Hygiene.*

2 (B) *One need set forth in subparagraph (A) and one of the*
3 *following:*

4 (i) *Money management.*

5 (ii) *Accessing community and health resources.*

6 (iii) *Meal preparation.*

7 (iv) *Transportation.*

8 (f) *Meets criteria as established by Article 2 (commencing with*
9 *Section 14525).*

10 14590.14. (a) *CBAS shall be provided and available at licensed*
11 *Adult Day Health Care centers that are certified by the department*
12 *as CBAS providers and shall be provided pursuant to a participant's*
13 *Individualized Plan of Care, as developed by the center's*
14 *multidisciplinary team. Medi-Cal managed care plans shall*
15 *contract for CBAS with any willing Adult Day Health Care center*
16 *that is certified by the department as a CBAS provider.*

17 ~~(b) In counties that have implemented managed care, CBAS~~
18 ~~shall only be available to eligible individuals enrolled in Medi-Cal~~
19 ~~managed care pursuant to Section 14186.3, except as follows:~~

20 ~~(1) In counties that have not implemented managed care, CBAS~~
21 ~~shall be provided as a fee-for-service benefit to all eligible~~
22 ~~enrollees.~~

23 ~~(2) For individuals who qualify for CBAS, but do not qualify~~
24 ~~for, or who have been exempted from, managed care, CBAS shall~~
25 ~~be provided as a fee-for-service benefit.~~

26 *(b) In counties where the department has implemented Medi-Cal*
27 *managed care, CBAS shall be available only as a Medi-Cal*
28 *managed care benefit pursuant to Section 14186.3, except that for*
29 *individuals who qualify for CBAS, but are exempt from enrollment*
30 *in Medi-Cal managed care, CBAS shall be provided as a*
31 *fee-for-service Medi-Cal benefit.*

32 *(c) In counties that have not implemented managed care, CBAS*
33 *shall be provided as a fee-for-service Medi-Cal benefit to all*
34 *eligible Medi-Cal beneficiaries who qualify for CBAS.*

35 14590.15. *All Medi-Cal managed care plans shall, at a*
36 *minimum, comply with all of the requirements in the Darling v.*
37 *Douglas settlement agreement, including, but not limited to do all*
38 *of the following:*

39 (a) *Authorize the number of days of service of CBAS to be*
40 *provided at the same amount and duration as would have otherwise*

1 been authorized and provided in Medi-Cal on a fee-for-service
2 basis. For beneficiaries receiving services on a fee-for-service
3 basis as authorized by the department on or before June 30, 2012,
4 the plan shall not reduce or otherwise limit the services without
5 conducting a face-to-face evaluation.

6 (b) Contract with any willing CBAS provider in the plan's
7 service area at no less than the prevailing Medi-Cal fee-for-service
8 rates to provide CBAS. Plans shall include all contracting CBAS
9 providers in its enrollee information material. This subdivision
10 shall not prevent a plan from paying CBAS providers above the
11 prevailing Medi-Cal fee-for-service rates.

12 (c) Meet on a regular basis with CBAS providers and member
13 representatives on CBAS issues, including the service authorization
14 process and provider payments.

15 14590.16. (a) CBAS providers shall meet all applicable
16 licensing, Medi-Cal, and ~~waiver program~~ *California's Bridge to*
17 *Reform Section 1115(a) Medicaid Demonstration (11-W-00192/9)*
18 standards, including, but not limited to, licensing provisions in
19 Division 2 (commencing with Section 1200) of the Health and
20 Safety Code, including Chapter 3.3 (commencing with Section
21 1570) of Division 2 of the Health and Safety Code, and shall
22 provide services in accordance with Chapter 10 (commencing with
23 Section 78001) of Division 5 of Title 22 of the California Code of
24 Regulations.

25 (b) CBAS providers shall be enrolled as ~~Medi-Cal waiver~~
26 *California's Bridge to Reform Section 1115(a) Medicaid*
27 *Demonstration (11-W-00192/9)* providers and shall meet the
28 standards specified in this chapter and Chapter 5 (commencing
29 with Section 54001) of Division 3 of Title 22 of the California
30 Code of Regulations.

31 14590.17. Commencing July 1, 2015, the department shall
32 ~~only~~ certify and enroll as new CBAS providers *only those providers*
33 that are exempt from taxation under Section 501(c)(3) of the
34 Internal Revenue Code.

35 14590.18. On or before March 1, 2014, and after consultation
36 with providers and consumer representatives, ~~at each~~ *each* Medi-Cal
37 managed care ~~plans~~ *plan* shall develop and publish an
38 implementation plan that describes the processes and criteria to
39 determine member eligibility for receiving CBAS and
40 reauthorization of services, and the criteria for determining the

1 number of days of service to be provided. In no instance shall a
2 plan make eligibility for services more restrictive or
3 administratively burdensome than *under* the terms of the ~~Darling~~
4 ~~v. Douglas~~ CBAS settlement agreement.

5 14590.19. On or before July 1, 2014, and after consultation
6 with CBAS providers, managed care plans, consumers, and
7 consumer representatives, the department shall submit to
8 appropriate legislative budget and policy committees for review
9 and comment a quality assurance proposal, which shall specify
10 how the department will address quality assurance in the CBAS
11 program under managed care.

12 14590.20. (a) Unless otherwise specified, in the event of a
13 conflict between any provision of this article and the Special Terms
14 and Conditions of California's Bridge to Reform Section 1115(a)
15 Medicaid Demonstration (11-W-00193/9), the Special Terms and
16 Conditions shall control.

17 (b) *This section shall become inoperative on August 31, 2014,*
18 *and, as of January 1, 2015, is repealed, unless a later enacted*
19 *statute, that becomes operative on or before January 1, 2015,*
20 *deletes or extends the dates on which it becomes inoperative and*
21 *is repealed.*